

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

## **MEMORANDUM AND ORDER**

This matter is before the Court on Defendant Tradenet Enterprises, Inc. d/b/a Vantage LED's Motion to Dismiss (Doc. 13). Defendant moves to dismiss Plaintiff Lucar, LLC's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). However, a Rule 12(b)(6) Motion to Dismiss "must be made before pleading if a responsive pleading is allowed" and Defendant filed an answer prior to filing its Motion to Dismiss.<sup>1</sup> FED. R. CIV. P. 12(b). Therefore, Defendant's Motion to Dismiss is untimely. Although the Court could construe Defendant's Motion as a Motion for Judgment on the Pleadings pursuant to 12(c), the Court is unsure that this is Defendant's intent. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). If Defendant would like to move for judgment on the pleadings, Defendant may do so in a separate motion.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant Tradenet Enterprises, Inc. d/b/a Vantage LED's Motion to Dismiss (Doc. 13) is **DENIED without prejudice**.

Dated this 6th day of April, 2015.

<sup>1</sup> Defendant's answer was filed on November 25, 2014 (Doc. 6).

  
JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE